

Amendments to the Drawings:

Please replace Figure 3 with the attached amended replacement drawing sheet for Figure 3. The replacement drawing sheet for Figure 3 omits reference characters as requested by the Examiner, those being reference characters 351, 352, 354, 371, 372 and 374.

REMARKS

Overview

The Examiner responded in the prior Office Action as follows: objected to the drawings; objected to the Abstract; rejected claims 16, 21, 24, 28, 85, 86 and 88-93 under 35 U.S.C. § 102(e) as being anticipated by Hazzard et al. (U.S. Patent Application No. 2005/0125389); and rejected claim 87 under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

Applicants hereby amend the specification and the drawings as indicated, and traverse the rejections of the claims as discussed below. Thus, claims 16, 21, 24, 28 and 85-93 continue to be pending, and claims 17-20, 22-23, 25-27 and 29-84 are currently withdrawn.

Applicants would like to thank Examiner Shah for her consideration during the telephone interview with Applicants' representative on March 1, 2007 on this application. During the interview, the subject matter of the cited prior art and pending claims was discussed, but agreement was not reached.

Analysis

Objections

The Examiner has objected to the Abstract "because it contains the implied phrase of the invention describes." (Examiner's Action dated December 6, 2006, page 4.) While Applicants do not fully understand the Examiner's objection, the Abstract has been amended in a manner that is believed to address the Examiner's objection. Accordingly, Applicants request that the Examiner withdraw this objection, or alternatively provide a more detailed explanation of what the Examiner finds objectionable.

The Examiner has also objected to Figures 2 and 4-7 of the drawings as containing handwritten text, and requested corrected drawing sheets in compliance with 37 CFR 1.121(d). However, Applicants note that corrected formal drawing sheets were previously filed for the application on August 3, 2004, as reflected in PAIR, and that these corrected formal drawing sheets do not contain any handwritten text. Accordingly, Applicants request that the Examiner withdraw this objection.

The Examiner has also objected to Figure 3 of the drawings as containing reference characters not mentioned in the description, and requested a corrected drawing sheet in compliance with 37 CFR 1.121(d). Applicants have included an amended replacement drawing sheet for Figure 3 that omits the reference characters indicated by the Examiner, those being reference characters 351, 352, 354, 371, 372 and 374. As such, Applicants believe that this objection is now moot, and request that the Examiner withdraw this objection.

Rejections Not Based On Prior Art

The Examiner has rejected claim 87 under 35 U.S.C. § 101 as being directed to non-statutory subject matter due to the recitation of a data transmission medium transmitting a generated data signal. In particular, the Examiner asserts that “a signal encoded with functional descriptive material does not fall within any of the categories of patentable subject matter set forth in § 101.” (Examiner’s Action dated December 6, 2006, page 4.) Applicants traverse the rejection, and note the Patent Office’s prior position that such subject matter is patentable (see the Patent Office’s Training Materials for Examination Guidelines For Computer-Related Inventions, dated March 28, 1996), as well as that the Patent Office’s Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility, dated October 26, 2005, expresses uncertainty regarding the position taken by the Examiner (see page 57). Moreover, Applicants note that the Federal Circuit has recently heard arguments (but not yet issued an opinion) as part of the *In re Nuijten* case regarding whether generated signals are patentable subject matter. More generally, however, the Supreme Court has on multiple occasions endorsed an expansive view of patentable subject matter, stating that “Congress intended statutory subject matter to ‘include anything under the sun that is made by man’,” and recently affirmed that “In choosing such expansive terms as ‘manufacture’ and ‘composition of matter,’ modified by the comprehensive ‘any,’ Congress plainly contemplated that the patent laws would be given wide scope.” See *Diamond v. Chakrabarty*, 447 U.S. 303, 309 (1980), and *J.E.M. Ag Supply, Inc. v. Pioneer Hi-Bred Intern., Inc.*, 534 U.S. 124, 130 (2001), citing *Diamond v. Chakrabarty*. As such, Applicants believe that the recitation of a data transmission medium transmitting a generated data signal in claim 87 is a statutory manufacture and thus patentable subject matter, and that the position of the Examiner is unsupported by relevant caselaw. Thus, Applicants request that the Examiner withdraw this rejection.

Rejections Based On Prior Art

The Examiner has rejected each of the previously pending claims 16, 21, 24, 28 and 85-93 under 35 U.S.C. § 102(e) as being unpatentable over Hazzard. However, each of the pending claims as rejected includes features and provides functionality not disclosed by Hazzard, and thus is allowable over that reference.

Furthermore, the subject matter of Applicants' pending claims was invented before the priority date of the Hazzard reference, and thus the Hazzard reference does not qualify as prior art for those claims under 35 U.S.C. § 102(e). In particular, as discussed in greater detail in the attached Declarations Of Prior Invention filed under 37 CFR 1.131, Applicants conceived of the invention prior to the December 9, 2003 filing date of the Hazzard patent application, and diligently pursued the invention from a time prior to December 9, 2003 until the filing of the present application on January 27, 2004. Accordingly, the rejection of all of the pending claims based on Hazzard is moot, and the pending claims are thus allowable over the cited prior art.

Conclusion

In light of the above remarks, Applicants respectfully submit that all of the pending claims are allowable. Applicants therefore respectfully request the Examiner to reconsider this application and timely allow all pending claims. If the Examiner has any questions or believes a telephone conference would expedite prosecution of this application, the Examiner is encouraged to call the undersigned at (206) 694-4815.

The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090.

Respectfully submitted,
SEED Intellectual Property Law Group PLLC

/James A. D. White/
James A. D. White
Registration No. 43,985

JDW:jaa

Enclosures:

Declaration Under 37 CFR 1.131 (2)
Exhibit A
1 Sheet of Replacement Drawing (Fig. 3)

701 Fifth Avenue, Suite 5400
Seattle, Washington 98104-7092
Phone: (206) 622-4900 Fax: (206) 682-6031